

July 12, 2012

## **LEGISLATIVE COMMITTEE REPORT**

A Legislative Committee meeting was held on Thursday, July 12, 2012 at 6:00 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Committee Members Present: Douglas, Moore, Allen, J. Harrison, Sandlin, Blaty

Others Present: County Judge Bob Clinard, Circuit Judge Jon Comstock, JP's Hawkins, Winscott and Curry, County Attorney George Spence, Administrator of General Services Elizabeth Bowen, Coroner Daniel Oxford

Media: Tom Sissom – Daily Record

JP Douglas called the meeting to order at 6:00 p.m.

### **Public Comments**

None

### **1. Presentation: Circuit Court Judge Jon Comstock**

Judge Jon Comstock extended an invitation to all county officials to attend the “Mental Health and the Criminal Justice System” Forum on October 4, 2012 from 8:30 a.m. to 12 noon at the Mercy Health conference room.

He stated that he is confounded, dismayed, and alarmed with what he is dealing with on a daily basis in felony criminal court that relates to mental health issues. He stated that the State Hospital in Little Rock is constantly full and that inmates who are ordered to be evaluated in the state hospital routinely stay in county jails for months after the order is entered.

Judge Comstock stated that lawyers, mental health professionals, state legislators and county officials have been invited to the seminar and that he hopes that the seminar raises awareness of the problem. He stated the goal of the Forum is to drive awareness and support for a legislative solution to the mental health challenges faced by the State Hospital and county jails across the state (including Benton County) relative to those who have been charged with felonies where proceedings have been suspended due to mental health issues.

Discussion was held concerning the effects of mental health issues on criminal court proceedings. County Judge Bob Clinard stated that this problem could present an opportunity to Benton County. He stated that it might be possible to convert some space in the county jail to accommodate the mentally ill who are incarcerated and awaiting treatment or evaluation. He stated if the state says they do not have enough room to keep these people, and then maybe the county could, and if the county could do it at less cost than the state, with the state paying for it, that might be a direction that we need to go. Further discussion was held on converting space in the county jail to accommodate the mentally ill who are in the Benton County Jail awaiting treatment or evaluation by the state.

JP Sandlin suggested that the county approach the state government to see if state money could be available to pay for such a conversion and to reimburse the county for housing the inmates. She stated that she would also want reassurances the state would provide the needed medical treatment and that she would not be interested unless the state made sure the inmates would get care.

## **2. Items for Discussion**

### **a. Prevailing Wage Scale**

County Judge Bob Clinard stated any county construction project using federal money has to abide by a federal wage scale and projects using state money have to pay according to a state wage scale. He stated that the state scale is higher than the current market, and he believes it is being artificially inflated by union contractors. He added that the state cannot do anything about the federal wage rate, but that he would like to see the state wage rate as spelled out in A.C.A. §22-9-208 done away with. He asked why there should even be a state wage scale at all, and why they could not let the market determine the rate.

JP Allen asked how the government can tell us what we have to pay outside the minimum wage.

County Attorney George Spence suggested that Congress has used the “Commerce Clause” of the U.S. Constitution to give itself the authority to regulate wages; the Commerce Clause refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

JP Allen asked if this was something to pursue on the Federal level.

County Judge Bob Clinard recommended drafting a proposed bill to repeal the portion of the state code which requires the state prevailing wage.

JP Allen made motion to have the County Attorney draft a bill to repeal A.C.A. §22-9-308, which requires adherence to a state prevailing wage, and that such bill be forwarded to the August 13, 2012 Committee of Thirteen agenda, seconded by JP Sandlin.

Discussion was held on drafting a bill appealing the federal prevailing wage scale which could be forwarded on to the U.S. Legislature, but no action was taken.

Motion passed by unanimous show of hands vote.

### **b. Flint Creek Power Plant Memorandum of Intent**

County Judge Bob Clinard stated that Flint Creek Power Plant is half-owned by Arkansas Electric Cooperative Corporation (AECC) and half-owned by SWEPCO. He stated that the Environmental Protection Agency (EPA) is asking that Flint Creek Power Plant put \$410 million into this plant to make it an EPA-approved coal-fired power plant. He stated that AECC had asked the Quorum Court to approve a pilot program which would allow them a 95% abatement of their taxes. He stated that the Quorum Court approved a resolution of intent on the county’s part to abate its portion of the taxes, but the Arkansas Department of Finance and Administration turned down the request. He said that AECC is now going back to seek a 65% - 35% split for a reduction in their taxes. He stated that county government as a body should have the authority to grant the abatement of a business’ taxes in order to keep that business afloat, not the Department of Finance Administration, or somebody in Little Rock. JP Allen stated that this is a good idea that they should pursue, but that some of the resistance is going to be because of the past history of counties stealing from other counties for an economic opportunity, and that may be why the law was changed.

County Judge Bob Clinard stated that Hempstead County got the 95% abatement for a new 600-megawatt plant and that the Flint Creek Power Plant is 520 megawatts.

JP Douglas stated that he spoke to Richard Weiss, Director of the Arkansas Department of Finance and Administration, and asked him why Benton County could not grant the 95% abatement, and Richard Weiss said that Flint Creek could reapply for a 65% abatement, but that the state has to make up the lost tax revenue to the schools.

County Attorney George Spence stated that there is an equalization formula that applies to school districts, where a portion of the millage paid basically goes to Little Rock and is redistributed to all schools in the state through funding formulas and student attendance counts. He said that if there is a reduction in the school tax revenue, it would also affect how much the State receives, and would also affect the return formula for districts across the state. He added that it would not only affect what the Gentry School District would receive, it would have an effect across the state.

Lengthy discussion was held on the state's rejection of the Flint Creek Power Plant's request for a 95% abatement, and how to propose a bill which would allow the granting of Act 9 tax proposals that do not impact the 25-mill minimum tax for operations and maintenance of schools.

JP Sandlin moved that a proposed bill be prepared by the County Attorney regarding Act 9 tax proposals to allow counties to have autonomy in allowing such proposals to the extent they do not impact the 25 mill minimum tax for operations and maintenance of schools, seconded by JP Blaty.

Motion passed by unanimous show of hands vote.

### **c. Implementation of Appeal Process for Nuisance Ordinance No. O-2007- 28**

Administrator of General Services Elizabeth Bowen stated that at the January 23, 2012 Legislative Committee meeting, proposed changes were recommended to amend §14-14-813 to recover costs related to remediating unsanitary conditions. She stated it has been suggested to consider adding an appeal process to the current Ordinance No. O-2007- 28. She stated a recommendation has been drafted, and it will be presented to the Public Safety Committee. She stated that the recommendation is to require a written appeal to be filed with the county service officer, Planning and Environmental Director Christopher Ryan, and that this process will follow the same process as appeals of planning board decisions. She stated there will be 30 days in which to file the appeal, and that the appeal must be specific in the decision that is being contested, which section of the code is being made pursuant of, and what relief is requested. She stated that on filing of the appeal, the county service officer shall within five working days file for a hearing to be scheduled, and that the hearing shall be held within 30 days, but not less than 15 days from the time the notice is certified to the appellant.

Elizabeth Bowen stated that the county judge shall appoint a three-person appeal review board which is knowledgeable in the area of concern, as needed to hear all persons desiring to be heard on the question of the findings and decisions of the administrator. She stated that following such hearing the appeal review board may affirm, modify or reverse the findings of the decisions.

Lengthy discussion was held on the recommended appeal process, how citations are presented to the property owner, and how fines are assessed.

Planning and Environmental Director Christopher Ryan stated that there are several steps that are taken before a citation is issued. He stated that initially there is a notice of violation, where the officer provides the initial ticket indicating the violation, and then the officer talks about remediation. He stated if there is some resistance, the officer will come and talk him about whether the citizen has a valid point that there is no violation. He stated that the next step is a warning, and only after the warning takes place is a citation issued; violations do not automatically go to straight to court.

County Attorney George Spence stated this ordinance is to assure that the Planning Board is looking at an appeal process and that it will go before the Public Safety Committee.

JP Allen made motion that an ordinance be prepared to provide for an appeal process to the Quorum Court, or a committee of Quorum Court members, to order to clean up property under the County's nuisance ordinance, and that such be developed now rather than waiting for action by the General Assembly on a proposed change to the State law regarding such matters, seconded by JP Blaty.

Motion passed by unanimous show of hands vote.

#### **d. Extra-Territorial Jurisdiction**

Elizabeth Bowen stated that state law allows for "extra-territorial jurisdictions" to be invoked, which are five miles or equal distance between city limits. She stated that within that distance, each city has the option of invoking the right to create a planning jurisdiction. She stated that County Attorney George Spence thought this needed to be discussed, and perhaps some legislation proposed that would make the state law clearer regarding the jurisdiction of the planning areas versus territorial jurisdiction. County Attorney George Spence stated that this issue developed between the Benton County Planning Board and the City of Bentonville. He stated from a legislative point of view, some sort of change to the state statute may be needed to reinforce saying if a city asserts their territorial jurisdiction, exactly what they are asserting and what they are responsible for. He said that all cities automatically have five miles of jurisdiction but they may take less if they file a map saying they want less, and some cities have done that.

Lengthy discussion was held on establishing certainty for those people doing projects and the extra-territorial jurisdiction of the cities and county.

County Judge Bob Clinard gave an example of what happened when the extra-territorial jurisdiction took effect with regards to development areas and the flood plain. He stated that it is unclear who has the authority to execute whatever requirements are in place, and that there is nothing in the law that determines if the county or the cities' rules are to be followed. He stated the cities want the county to enforce their regulations at the county's costs. He added that this affects people's lives; it affects the builders and the economy. He stated if the cities have the authority to tell the counties how they are going to issue permits and require what they do, then they need to go do the inspections.

County Attorney George Spence stated that the big problem is the uncertainty, and that there needs to be some agreement and standards set with the Benton County Planning Department and surrounding cities, to provide certainty.

Discussion was held on County Attorney George Spence establishing a proposed bill to present to the Legislature.

JP Allen made motion that a proposed bill be prepared by the County Attorney to address conflicts and confusion with regard to planning jurisdiction between the County and cities, seconded by JP Moore.

Motion approved by unanimous show of hands vote.

#### **e. Resolution Request to provide Additional Training for Coroners and Deputy Coroners**

JP Jay Harrison stated that at the annual Arkansas Association of Counties meeting, some concerns were raised that there is not additional certified training for coroners and their deputies.

Coroner Daniel Oxford was recognized and stated that the Arkansas Crime Laboratory, the Arkansas State Police, the Coroners Association, and the Arkansas Department of Health (ADH) have partnered with the Arkansas Law Enforcement Training Academy (ALETa) to establish a course curriculum for a pilot program during the summer of 2012 to provide certified in-state training for medicolegal death investigation for Coroners and Deputy Coroners. He stated in order to provide the training, ALETa has requested a letter of resolution from each county supporting the additional training courses for their Coroners and their Deputies.

Lengthy discussion was held on two draft resolutions presented and the training requirements for the Coroner and Deputy Coroners.

JP J. Harrison made motion to approve merging the two resolutions presented and forward the revised resolution to the August 14, 2012 Committee of Thirteen agenda, seconded by JP Sandlin.

JP J. Harrison stated that this resolution shows Benton County's support for additional training for coroners and their deputies and will be provided to the Arkansas Association of Counties (AAC), and to the General Assembly.

Motion passed by unanimous show of hands vote.

**f. Ordinance Request - Establishing an Electronic Warrants Transfer (DIRECT DEPOSIT) System Directly Into Payees' Accounts in Financial Institutions in Payment of Any Account Allowed Against the County**

County Attorney George Spence stated this ordinance request allows the Treasurer to establish an electronic warrants transfer (Direct Deposit) system and follows state statute §14-24-121.

JP Allen made motion to approve the ordinance request and forward to the August 14, 2012 Committee of Thirteen agenda, seconded by JP Sandlin.

Motion passed by unanimous show of hands vote.

After motion and second meeting adjourned at 8:15 p.m.